

# U.S. Immigration and Customs Enforcement

## Student and Exchange Visitor Program

### SEVP Draft Policy Guidance 1204-05: Contractual Relationships

**Issue Date:** (date signed)  
**Effective Date:** (date implemented)  
**Supersedes:** not applicable

#### 1. Purpose/Background.

School officials at multiple schools often contract between those schools to provide instruction for their students. This policy guidance addresses issues related to these contractual relationships and how those relationships may affect the Student and Exchange Visitor Program (SEVP)-certification of F and M schools.

#### 2. Definitions.

**2.1 Contract.** A contract is an agreement between two or more parties creating obligations that are enforceable or otherwise recognizable at law.

**2.2 Governance.** Governance is ownership (legal possession) and executive management (substantive operation) of an organization. In this context, the organization is a school.<sup>1</sup>

**2.3 Instructional Site.** An instructional site is any physical location where school officials provide instruction or training. This includes any physical location that supports activities related to instruction or training (e.g., research or laboratory exercises) for F and/or M students. It also includes all terms that describe this type of entity (e.g., campus, satellite, auxiliary, coordinate, extension, off-campus, regional or other).

**2.4 School.** A school is an instructional site that meets these criteria:

- An F or M student can complete a program of study
- Has one or more teachers, administrators, buildings and/or enrolled students
- Has a defined curriculum
- Has clear processes for measuring educational progress in learning.

A school may be comprised of one or multiple instructional sites.

**3. Policy.** All schools enrolling F or M nonimmigrant students must have SEVP-

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<sup>1</sup> See SEVP's forthcoming policy guidance on governance for more information.

certification. Schools that share governance are not required to have separate SEVP-certification. Schools in contractual relationships that do not share governance must each separately meet all SEVP requirements, including SEVP-certification and other applicable requirements (e.g., the accreditation of English language training programs (ESL) by a U.S. Department of Education recognized accreditation agency or Part 141 or Part 142 Federal Aviation Administration certification for flight schools).

#### **4. Procedures/Requirements.**

**4.1 SEVP-certification.** All schools enrolling F or M nonimmigrant students must be SEVP-certified. Schools that share governance may share SEVP-certification on one Form I-17 petition. Schools in contractual relationships that do not share governance may not share SEVP-certification. These schools must individually seek and receive SEVP-certification on different Form I-17 petitions, “Petition for Approval of School for Attendance by Nonimmigrant Students.”

**4.2 Reporting of Contractual Programs.** Schools should identify contractual relationships and report them to SEVP with the initial request for certification or as an update. Schools that wish to enter into a contractual relationship with another school must submit evidence which shows the portion of the course of study that will be provided by the contracted school and explain the need to contract out the program. School officials should provide a course catalog or other appropriate documents from the contracted school showing that the contracted school has the resources available to provide the contracted course work.

#### **4.3 Governance and Contractual Relationships.**

**4.3.1 Governance.** Governance is ownership and executive management of a school.

- 1) Ownership – Ownership is comprised of the person, persons, or group legally in possession – control, conveyance, benefit, responsibility, and liability – of the school.
- 2) Management – Management includes the people in a school given the responsibility for the operation of the school. Executive management involves the people with authority over the long-term planning and decision-making of the school. This contrasts with the Day-to-day management of an organization—the everyday leadership of and responsibility for the operation of the organization.

**4.3.2 Shared Governance and Form I-17 Petitions.** Officials at schools that share governance may list each school on the same Form I-17. Individual circumstances will dictate the best course of action. For example, officials at two large schools that both have full day-to-day staffs and are located in different places may decide it is administratively easier to have a separate Form I-17 petition for each school. Officials should, however, be aware of the increased costs of multiple separate Form I-17 petitions.

Officials at schools that do not share governance must list each school separately on different Form I-17 petitions.

**4.3.3 Form I-20 Issuance.** In cases where various relationships exist between schools, shared governance should be used to help guide which school should issue the Form I-20 for a student:

- 1) *Shared Governance.* A school that shares governance with another school should issue the student's Form I-20 based on where the student will complete the majority of his or her course of study and will issue the student's degree or certificate, or show completion of the student's educational objective.
- 2) *No Shared Governance.* When a school does not share governance with another school, each should have separate SEVP-certification. In a contractual relationship between the two, the school from which the student will complete the majority of his or her course of study and will issue the student's degree or certificate or show completion of the student's educational objective should issue the student's Form I-20.

**4.4 ESL School Considerations.** Students completing a contracted ESL program of study before attending an actual degree-seeking program should have their Form I-20 issued by the ESL training provider and for the ESL program of study. The ESL training provider will transfer the student's SEVIS record to the degree-seeking institution upon completion of a full course of study at the ESL training school.

Students studying at two schools that share governance—which include part-time ESL course work coupled with part-time course work in a degree-granting program of study (combined to equate a full course of study)—should have their Form I-20 issued for the degree-granting program of study. If at any time the ESL course of study becomes the majority of the course work taken by the student, the degree-granting school should transfer the student's SEVIS record to the ESL training school for that period.

**5. Responsibilities.**

None.

**6. Authorities/References.**

**6.1** *8 USC 1101(a)(15)(F) and (a)(15)(M).*

**6.2** *8 CFR 214.2(f) and (m) and 214.3.*

**7. Attachments.**

None.

8. **No Private Right.** Policy Guidance is not a substitute for applicable legal requirements, nor is it itself a rule or a final action by SEVP. It does not impose or intend to impose on any party any legally-binding requirements, rights or benefits, whether substantive or procedural, enforceable at law by any party in any administrative, civil or criminal matter. This guidance represents SEVP's current thinking on this topic and may assist schools, F and M students, the general public, and SEVP, as well as other federal and state regulators, in applying statutory and regulatory requirements. SEVP can use an alternative approach if the approach satisfies the requirements of the applicable statutes and regulations. This Policy Guidance is not intended to, does not and may not be relied upon to create any right or benefit, substantive or procedural, enforceable at law by any party in any administrative, civil or criminal matter.

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